

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
AT&T's Request to Contribute to Universal	)	
Service Based on Projected Revenues	)	
	)	
Federal-State Joint Board on Universal	)	CC Docket No. 96-45
Service	)	

**COMMENTS**

BellSouth Corporation, on behalf of itself and its wholly-owned subsidiaries, ("BellSouth"), hereby submit its comments on the letter filed by AT&T requesting permission to base its universal service contributions on projected revenues.

1. AT&T's request should be summarily denied. The relief requested by AT&T is nothing new. Other carriers have sought and been denied similar relief. The only aspect of AT&T's request that differentiates it from those that have preceded it is that AT&T does not even make an effort to support its request. Instead, it merely asserts that its customer base is declining and, unless it is able to use projected revenues in determining its universal service contributions, it will have to recover its contributions over a smaller customer base than the one on which the contribution was assessed. AT&T's letter is legally insufficient for the Commission to grant the relief that AT&T requests.

2. AT&T's letter amounts to a request for a waiver of the existing rules. As a matter of law, AT&T must demonstrate that its request for waiver of the Commission's universal service contribution rules would promote the public interest. AT&T has provided no such demonstration. Indeed, AT&T's request is about AT&T's pecuniary and competitive interests,

not the public interest. It is AT&T that would benefit from the waiver, not the consumer.

Whatever amount AT&T is relieved from contributing to the universal service fund is contributed by another carrier and recovered by that carrier from its retail customers. AT&T has not made the case that its customers are differently situated from any other carrier's customers or deserve special treatment from the Commission.

3. The only basis for AT&T's request is that the demand for its services is changing.

Yet, when other carriers sought relief from the Commission's requirement that universal service contributions be based on prior year revenues, AT&T argued:

Because the current telecommunications marketplace is becoming increasingly competitive, as the Commission is well-aware (and as Affinity necessarily concedes), it is predictable that as carriers vie for business an individual carrier's demand, and consequently its revenues, may fluctuate considerably from year to year. Moreover, because competition drives prices of telecommunications services closer to costs, carriers may experience a reduction in their annual revenues even absent any change in demand.

Such year to year fluctuations will necessarily impact the levels of a carrier's USF obligation under the Commission's revenue-based USF contribution scheme, and do not in themselves provide any basis for waiver or modification of the Commission's mechanism.<sup>1</sup>

As AT&T further counseled the Commission:

Affinity and other carriers should not now be heard to claim that they are entitled to waivers of that mechanism due simply to annual variations in their revenue. Such claims could equally well be made by any telecommunications competitor that may suffer a reversal of fortune in the competitive marketplace. The Court of Appeals has cautioned that the Commission should not 'tolerate evisceration of a rule by waivers.' As the Commission has previously recognized, this is precisely the prohibited result that would follow where virtually any carrier subject to a rule could at some time qualify for such relief. (footnotes omitted)<sup>2</sup>

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<sup>1</sup> AT&T Opposition to the petition for partial waiver filed by Affinity Corporation, at 2-3 (filed July 27, 1998).

<sup>2</sup> *Id.* at 3-4.

4. The Commission, in refusing to grant Affinity and others a waiver of the prior year revenue requirement, agreed with AT&T “that annual revenue variations are an inherent part of the competitive environment in the telecommunications industry.”<sup>3</sup> AT&T’s counsel and the Commission’s determination are no less applicable today to AT&T’s circumstances than they were to Affinity in 1998.

5. AT&T’s letter offers nothing to distinguish the relief it is requesting from the requests that other carriers have made and which the Commission has denied.<sup>4</sup> AT&T simply ignores the precedent—nor is AT&T’s failure to address the previous waivers particularly surprising. There is no way in which AT&T can differentiate its request or justify the waiver.

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<sup>3</sup> *In the Matter of Federal-State Joint Board on Universal Service and Petitions for Waiver or Reconsideration of Sections 54.706, 54.709, and/or 54.711 of the Commissions Rules filed by: Affinity Corporation, Hotel Communications, Inc., LDC Telecommunications Inc. MobileTel, Inc., National Telephone & Communications, Inc., Operator Communications, Inc., U.S. Network, Inc.*, CC Docket No. 96-45, *Memorandum Opinion and Order and Seventeenth Order on Reconsideration*, 15 FCC Rcd 20769, 20784, ¶ 30 (1999).

<sup>4</sup> It is apparent that AT&T has now come to the conclusion that it no longer favors a universal service assessment mechanism based on historical revenues. The appropriate means for AT&T to get the Commission to change the assessment mechanism is through rulemaking, not a waiver. Indeed, the Commission has initiated a proceeding specifically to address changes to the universal service assessment mechanism. *See In the Matter of Federal State-Joint Board on Universal Service et. al.*, CC Docket No. 96-45, *Further Notice of Proposed Rulemaking and Report and Order*, FCC 02-43 (rel. Feb. 26, 2002).

6. Accordingly, the Commission should deny AT&T's request.

Respectfully submitted,

**BELLSOUTH CORPORATION**

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Date: April 12, 2002

**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 12<sup>th</sup> day of April 2002 served the following parties to this action with a copy of the foregoing **COMMENTS** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the parties listed below.

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/s/ Juanita H. Lee  
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**+ VIA ELECTRONIC FILING**